

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

RICHARD LEROY RUSSELL,)	CV 06-08-H-DWM-CSO
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
MONTANA STATE PRISON, MIKE MAHONEY,)	
Warden; DON BERRYMAN, Habilitative)	
Services; ROSS SWANSON, Deputy)	
Warden; MYRON BEESON, Associate)	
Warden; KEN INGLE, Director R.A.C.;)	
and JOHN DOE,)	
)	
Defendants.)	
)	

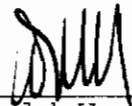
On September 13, 2006, the Court issued an Order finding that the Plaintiff's Complaint failed to state a claim upon which relief can be granted and allowing him until October 9, 2006 to file an amended complaint. See Doc. No. 5. Plaintiff was advised that failure to timely file an amended complaint would result in a recommendation of dismissal. Plaintiff has not filed an amended complaint and United States Magistrate Judge Carolyn S. Ostby now recommends denial of Plaintiff's Complaint.

Plaintiff was advised of his right to object to Judge Ostby's recommendation but did not do so, thereby waiving the

right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Ostby's recommendation and adopt it in full. It is therefore HEREBY ORDERED that the Complaint is DISMISSED WITHOUT PREJUDICE for failure to state a claim upon which relief can be granted. The docket shall reflect that the filing of the Complaint counts as one strike against the Plaintiff for purposes of 28 U.S.C. § 1915(g).

DATED this 20th day of November, 2006.



Donald W. Molloy, Chief Judge
United States District Court

